IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 132 of 2007.

Date of Decision: 30th August, 2007

Bal Raj Singh and others. **Petitioners.**

Versus

Land Acquisition Collector. **Respondent.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting?[1] Yes.

For the petitioner: Mr. Sanjay Jaswal, Advocate.

For the respondent: Mr. P.M. Negi, Dy. Advocate General.

V.K. Gupta, C.J. (Oral).

The only ground urged in this petition filed under Article 227 of the Constitution of India against the order dated 12th March, 2007 passed by the respondent-Land Acquisition Collector (North Zone), HPPWD, Kangra rejecting the petitioners' application filed under Section 18 of the Land Acquisition Act is that the respondent did not have any jurisdiction to reject such an application on the ground that it was barred by limitation. The submission of the learned counsel for the petitioners is that the Collector has no power, authority or jurisdiction to reject an

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

application filed under Section 18 of the Act even if it is time barred. In other words, the submission is that even if an application is time barred the Collector having no power to reject the same is bound to make a Reference to the District Judge who alone is competent to consider and decide whether the application was or is time barred or not.

Sub-section (2) of Section 18 reads thus:-

> "(2) The application shall state the grounds on which objection to the award is taken:
>
> Provided that every such application shall be made,-
>
> (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
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> (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

By virtue of Section 2 of the Land Acquisition (Himachal Pradesh Amendment) Act, 1986 (Act No.17 of 1986) second proviso was added to sub-section (2) (supra) in so far as the State of Himachal Pradesh is concerned. This second proviso reads thus:-

> "Provided further that the Collector may entertain an application under this section, after the expiry of the period of six weeks but within a period of six months, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time."

A bare reading of the second proviso clearly and without any manner of doubt suggests that the power and jurisdiction lies with the Collector to entertain an application under Section 18 even after the expiry of six weeks if he is satisfied that the applicant was prevented by sufficient cause from making the application in time. Of course this second proviso also contains an embargo that the time beyond a period of six months cannot be extended. If, therefore, the Collector has the power and jurisdiction to entertain an application beyond a prescribed period of limitation, it clearly means that he also has the power to reject the application as being time barred.

In the case of **Mohan Lal Revta** vs. **State of Himachal Pradesh and another,** reported in 1992 (2) Sim.L.C. 97, a Division Bench of this Court while dealing with a matter arising out of the rejection of an application under Section 18 of the Land Acquisition Act by the Collector on the ground of it being time barred and by referring to the aforesaid second proviso upheld the order of rejection passed by the Collector, clearly implying therein that the jurisdiction and power exercised by the Collector in rejecting a time barred application was sustainable in law.

Another Division Bench of this Court in the case of **Santokh Singh and another** vs. **State of H.P. and another**, reported in 1996 (1) Sim.L.C. 191 again referring to Section 18 of the Land Acquisition Act in the light of the aforesaid Himachal

Pradesh Amendment clearly held that the Collector under Section 18 has the power to reject an application on the ground of it being time barred.

Whether the Collector under Section 18 has the power to reject an application which is time barred or, in other words, he does not have the power to make a reference under Section 18 to the Court if the application is time barred, are two statements of law, which are akin to each other. Not having power to make a reference in a time barred application, in effect and substance means that the Collector has the power, jurisdiction, duty as well as obligation to reject an application which is time barred.

The aforesaid principle was recognized in a judgment of the Supreme Court in the case of **Mohammed Hasnuddin** vs. **State of Maharashtra,** reported in (1979) 2 SCC 572 wherein their Lordships held as under:-

> "22. The word "requires" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference under Section 18 on the fulfillment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference under

> Section 18 is thus circumscribed by the conditions laid down therein and one condition is the condition regarding limitation to be found in the proviso.
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> 23. The conditions laid down in Section 18 are matters of substance and their observance is a condition precedent to the Collector's power of reference, as rightly observed by Chandavarkar, J., in re Land Acquisition Act (supra). We are inclined to the view that the fulfillment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, sub-section (2) is a sine qua non for a valid reference by the Collector."

The aforesaid judgment was taken note of and followed in a subsequent judgment of the Supreme Court in the case of **Officer on Special Duty (Land Acquisition) and another** vs. **Shah Manilal Chandulal and others**, reported in (1996) 9 SCC 414 wherein the following observations were made:-

> "8. `The right to make application in writing is provided under Section 18(1). The proviso to sub-section (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In *Mohd. Hasnuddin* v. *State of Maharashtra*, (1979) 2 SCC 572, this Court was called upon to decide in a reference under Section 18 made by the Collector to the court beyond the period of limitation, whether the court can go behind the

reference and determine the compensation, though the application for reference under Section 18 was barred by limitation? This Court had held that the Collector is required under Section 18 to make a reference on the fulfillment of certain conditions, namely, (i) written application by interested person who has not accepted the award; (ii) nature of the objections taken for not accepting the award; and (iii) time within which the application shall be made. In paragraph 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference under Section 18 is circumscribed by the conditions laid down therein and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a statutory authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down under Section 18. Even if the reference is wrongly made by the Collector, the court will have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made under Section 18. If the reference is not proper there is no jurisdiction in the court to hear the reference. It was, therefore, held that it is the duty of the court to see that the statutory conditions laid down in Section 18 including the one relating to limitation, have been complied with and the application is not time barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine

compensation and if it is time barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the court. Therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of Section 18 of the Act and if it finds that it was not so made, the court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the court was justified in refusing to answer the reference."

Looking from whatever angle, whether in the light of law laid down by their Lordships of the Supreme Court in the aforesaid two judgments or the ratio in the two judgments passed by the Division Bench of this Court and referred to hereinabove, the legal position which clearly emerges is that if an application filed under Section 18 of the Act is time barred, the Collector not only has the power and jurisdiction to reject such an application but also an obligation to do so, subject of course to his exercising discretion in terms of the second proviso (supra), which discretion has to be exercised in accordance with well established principles of law.

No other point was urged.

The petition is dismissed.

30th August, 2007. (V.K. Gupta), C.J.
(tr)